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OFFICE OF PETITIONS

In re Application	:
Jack Rogers	:
Application No. 09/910,757	: DECISION ON APPLICATION
Filed: July 24, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 81994/282402	:

This is a decision on the "Petition for Correction of Patent Term Adjustment Calculation Under 37 C.F.R. § 1.705(b)," filed August 23, 2004. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred ninety-three (193) days to three hundred forty-five (345) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **three hundred forty-five (345) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 26, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is one hundred ninety-three (193) days. On August 23, 2004, Applicant timely¹ submitted the instant application for patent term adjustment,

¹ Applicant filed the application for patent term adjustment prior to filing the issue fee.

asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred forty-five (345) days.

Applicant asserts entitlement to a patent term adjustment of three hundred forty-five (345) days on the basis that the PTO should have been assessed delay of three hundred forty-five days (345) for mailing a first Office action on September 4, 2003.

Applicant states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of one hundred ninety-three (193) days based on an adjustment for PTO delay of one hundred ninety-three (193) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by zero (0) days of applicant delay. The adjustment of one hundred ninety-three (193) days is at issue.

The adjustment of one hundred ninety-three (193) days has been found to be incorrect. The application was filed on July 24, 2001. The Office had fourteen months from that date, or until September 24, 2002, to mail either an action under 35 U.S.C. 132 or a Notice of Allowance. An action under 35 U.S.C. 132 was not mailed until September 4, 2003. Therefore, PTO delay should have been assessed as three hundred forty-five (345) days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **three hundred forty-five (345) days** (345 days of PTO delay and 0 days of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e).

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin A. Ferriter
KF

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen